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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

James McGarr,

Plaintiff,

vs.

Repossession Services of Arizona, LLC,
an Arizona Limited Liability Company,
MALCK, LLC, a Delaware limited
liability company, **Joel Gonzalez and**
Jane Doe Gonzalez, a married couple,
and **Chris Finn and Jane Doe Finn,** a
married couple,

Defendants.

No.

VERIFIED COMPLAINT

Plaintiff, James McGarr (“Plaintiff” or “James McGarr”), sues the Defendants, Repossession Services of Arizona, LLC (“RSA”), MALCK, LLC, Joel Gonzalez and Jane Doe Gonzalez, and Chris Finn and Jane Doe Finn (collectively “Defendants”); and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid overtime wages, liquidated damages, attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201,

PARTIES

7. At all times material to the matters alleged in this Complaint, Plaintiff was an individual residing in Maricopa County, Arizona, and is a former employee of Defendants.

8. At all material times, Defendant RSA was an Arizona limited liability company duly licensed to transact business in the State of Arizona. At all material times, Defendant RSA does business, has offices, and/or maintains agents for the transaction of its customary business in Maricopa County, Arizona.

9. At all relevant times, Defendant RSA owns and operates as a company that repossessing vehicles.

10. Under the FLSA, Defendant RSA is an employer. The FLSA defines “employer” as any person who acts directly or indirectly in the interest of an employer in relation to an employee. At all relevant times, Defendant RSA had the authority to hire and fire employees, supervised and controlled work schedules or the conditions of employment, determined the rate and method of payment, and maintained employment records in connection with Plaintiff’s employment with Defendants. As a person who acted in the interest of Defendant RSA in relation to the company’s employees, Defendant RSA is subject to liability under the FLSA.

11. At all material times, Defendant MALCK LLC was a Delaware limited liability company duly licensed to transact business in the State of Arizona. At all material times, Defendant MALCK, LLC does business, has offices, and/or maintains

1 agents for the transaction of its customary business in Maricopa County, Arizona.

2 Defendant MALCK, LLC is an owner of Defendant RSA.

3 12. Under the FLSA, Defendant MALCK LLC is an employer. The FLSA
4 defines “employer” as any person who acts directly or indirectly in the interest of an
5 employer in relation to an employee. At all relevant times, Defendant MALCK, LLC had
6 the authority to hire and fire employees, supervised and controlled work schedules or the
7 conditions of employment, determined the rate and method of payment, and maintained
8 employment records in connection with Plaintiff’s employment with Defendants. As a
9 person who acted in the interest of Defendants in relation to the company’s employees,
10 Defendant MALCK, LLC is subject to liability under the FLSA.
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12
13 13. Defendants Joel Gonzalez and Jane Doe Gonzalez are, upon information
14 and belief, husband and wife. They have caused events to take place giving rise to the
15 claims in this Complaint as to which their marital community is fully liable. Joel
16 Gonzalez and Jane Doe Gonzalez are owners of Defendant RSA and were at all relevant
17 times Plaintiff’s employers as defined by the FLSA, 29 U.S.C. § 203(d).
18

19 14. Under the FLSA, Defendants Joel Gonzalez and Jane Doe Gonzalez are
20 employers under the FLSA. The FLSA defines “employer” as any person who acts
21 directly or indirectly in the interest of an employer in relation to an employee. At all
22 relevant times, Defendants Joel Gonzalez and Jane Doe Gonzalez had the authority to
23 hire and fire employees, supervised and controlled work schedules or the conditions of
24 employment, determined the rate and method of payment, and maintained employment
25 records in connection with Plaintiff’s employment with Defendants. As persons who
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1 acted in the interest of Defendants in relation to the company's employees, Defendants
2 Joel Gonzalez and Jane Doe Gonzalez are subject to individual liability under the FLSA.

3 15. Defendants Chris Finn and Jane Doe Finn are, upon information and belief,
4 husband and wife. They have caused events to take place giving rise to the claims in this
5 Complaint as to which their marital community is fully liable. Chris Finn and Jane Doe
6 Finn are owners of Defendant RSA and Defendant MALCK, LLC and were at all
7 relevant times Plaintiff's employers as defined by the FLSA, 29 U.S.C. § 203(d).

8
9 16. Under the FLSA, Defendants Chris Finn and Jane Doe Finn are employers
10 under the FLSA. The FLSA defines "employer" as any person who acts directly or
11 indirectly in the interest of an employer in relation to an employee. At all relevant times,
12 Defendants Chris Finn and Jane Doe Finn had the authority to hire and fire employees,
13 supervised and controlled work schedules or the conditions of employment, determined
14 the rate and method of payment, and maintained employment records in connection with
15 Plaintiff's employment with Defendants. As persons who acted in the interest of
16 Defendants in relation to the company's employees, Defendants Chris Finn and Jane Doe
17 Finn are subject to individual liability under the FLSA.

18
19 17. Plaintiff is further informed, believes, and therefore alleges that each of the
20 Defendants herein gave consent to, ratified, and authorized the acts of all other
21 Defendants, as alleged herein.

22
23 18. Defendants, and each of them, are sued in both their individual and
24 corporate capacities.
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1 19. Defendants are jointly and severally liable for the injuries and damages
2 sustained by Plaintiff.

3 20. At all relevant times, Plaintiff was an “employee” of Defendants as defined
4 by the FLSA, 29 U.S.C. § 201, *et seq.*

5 21. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
6 Defendants.

7 22. At all relevant times, Defendants were and continue to be “employers” as
8 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

9 23. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
10 Defendants.

11 24. At all relevant times, Plaintiff was an “employee” of Defendants as defined
12 by A.R.S. § 23-362.

13 25. At all relevant times, Defendants were and continue to be “employers” of
14 Plaintiff as defined by A.R.S. § 23-362.

15 26. Defendants individually and/or through an enterprise or agent, directed and
16 exercised control over Plaintiff’s work and wages at all relevant times.

17 27. Plaintiff, in his work for Defendants, was employed by an enterprise
18 engaged in commerce that had annual gross sales of at least \$500,000.

19 28. At all relevant times, Plaintiff, in his work for Defendant, was engaged in
20 commerce or the production of goods for commerce.

21 29. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
22 interstate commerce.

1 30. Plaintiff, in his work for Defendant, regularly handled goods produced or
2 transported in interstate commerce.

3 **FACTUAL ALLEGATIONS**

4 31. Defendants own and/or operate as Repossession Services of Arizona, an
5 enterprise located in Maricopa County, Arizona.

6 32. Plaintiff was hired by Defendants in approximately December 2020, and
7 Plaintiff worked for Defendants until approximately June 2021.

8 33. At all relevant times, in his work for Defendants, Plaintiff's job duties
9 included driving tow truck, driving a camera car, locating vehicles for repossession, and
10 repossessing vehicles.
11

12 34. Upon information and belief, Defendants, in their sole discretion, agreed to
13 pay Plaintiff \$17.80 per week plus commission, regardless of the number of hours he
14 worked in a given workweek.
15

16 35. In his work for Defendants, Plaintiff regularly worked in excess of 40 hours
17 in a given workweek.
18

19 36. Plaintiff typically worked between 40 and 55 hours per week for
20 Defendants.
21

22 37. Rather than classify Plaintiff as an employee, Defendants classified him as
23 an independent contractor.

24 38. Despite Defendants having misclassified Plaintiff as an independent
25 contractor, Plaintiff was actually an employee, as defined by the FLSA, 29 U.S.C. § 201
26 et seq.
27

1 39. In his work for Defendants, and throughout his entire employment with
2 Defendants, Plaintiff was not compensated \$684 per week on a salary basis.

3 40. Plaintiff, in his work for Defendants, was subject to a policy and practice of
4 having his pay deducted for missing partial days, including leaving early and arriving
5 late.
6

7 41. Plaintiff, in his work for Defendants, was subject to a policy and practice of
8 having varying amounts of weekly pay based on quality or quantity of work.

9 42. Defendants controlled Plaintiff's schedules.
10

11 43. In his work for Defendants, Plaintiff used vehicles and equipment owned
12 by Defendants.

13 44. At all relevant times, Plaintiff was economically dependent on Defendants.
14

15 45. The following further demonstrate that Plaintiff was an employee:

- 16 a. Defendants had the exclusive right to hire and fire Plaintiff;
- 17 b. Defendants made the decision not to pay overtime to Plaintiff;
- 18 c. Defendants supervised Plaintiff and subjected him to Defendants'
19 rules;
- 20 d. Defendants required Plaintiff to wear their uniform;
- 21 e. Plaintiff had no opportunity for profit or loss in the business;
- 22 f. The services rendered by Plaintiff in his work for Defendants was
23 integral to Defendants' business;
- 24 g. Plaintiff was hired as a permanent employee, working 40-55 hours
25 per week for more than 6 months;
- 26
- 27

1 h. Plaintiff had no right to refuse work assigned to him by Defendants.

2 46. At all relevant times, Defendants did not pay Plaintiff one and one-half
3 times his regular rates of pay for time spent working in excess of 40 hours in a given
4 workweek.

5 47. During the time that Plaintiff worked for Defendants, Plaintiff regularly
6 worked in excess of 40 hours in a given workweek without receiving any overtime
7 premium whatsoever, in violation of the FLSA, 29 U.S.C. § 207(a).

8 48. During the time that Plaintiff worked for Defendants, Plaintiff regularly
9 worked in excess of 40 hours in a given workweek without receiving one and one-half
10 times his regular rate of pay, in violation of the FLSA, 29 U.S.C. § 207(a).

11 49. Defendants improperly deducted wages from Plaintiff's final paycheck for
12 purported "damages" to the vehicle that he drove.

13 50. In his final week of work for Defendants, Plaintiff worked approximately
14 58 hours for Defendants. Plaintiff's final paycheck was approximately \$200.00.

15 51. As a result of these improper deductions, Defendants failed to compensate
16 Plaintiff at least the statutory minimum wage for all hours worked in his final workweek.

17 52. As a result of Defendants' willful failure to compensate Plaintiff at least the
18 statutory minimum wage for such hours worked, Defendants violated 29 U.S.C. § 206(a).

19 53. As a result of Defendants' willful failure to compensate Plaintiff at least the
20 statutory minimum wage for such hours worked, Defendants violated the AMWA,
21 A.R.S. § 23-363.

1 54. As a result of Defendants' willful failure to compensate Plaintiff all wages
2 due and owing for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.

3 55. Defendants classified Plaintiff as an independent contractor to avoid their
4 obligation to pay Plaintiff one and one-half times his regular rate of pay for all hours
5 worked in excess of 40 hours per week.
6

7 56. Defendants classified Plaintiff as an independent contractor to avoid their
8 obligation to pay Plaintiff overtime for all hours worked in a given workweek.

9 57. Plaintiff was a non-exempt employee.
10

11 58. At all relevant times, Defendants failed to properly compensate Plaintiff for
12 any of his overtime hours.

13 59. Defendants knew that – or acted with reckless disregard as to whether –
14 their refusal or failure to properly compensate Plaintiff during the course of his
15 employment would violate federal and state law, and Defendants were aware of the
16 FLSA minimum wage and overtime requirements during Plaintiff's employment. As
17 such, Defendants' conduct constitutes a willful violation of the FLSA, the AMWA, and
18 the AWA.
19

20 60. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
21 of his rights under the FLSA.
22

23 61. Plaintiff is a covered employee within the meaning of the FLSA.

24 62. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
25 of his rights under the FLSA.
26
27

1 63. Defendants individually and/or through an enterprise or agent, directed and
2 exercised control over Plaintiff's work and wages at all relevant times.

3 64. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
4 from Defendants compensation for unpaid minimum and overtime wages, an additional
5 amount equal amount as liquidated damages, interest, and reasonable attorney's fees and
6 costs of this action under 29 U.S.C. § 216(b).

8 65. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
9 from Defendants compensation for unpaid minimum wages, an additional amount equal
10 to twice the unpaid minimum wages as liquidated damages, interest, and reasonable
11 attorney's fees and costs of this action under A.R.S § 23-363.

13 66. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
14 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
15 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
16 and his costs incurred under A.R.S. § 23-355.

18 **COUNT ONE: FAIR LABOR STANDARDS ACT**
19 **FAILURE TO PAY OVERTIME**

20 67. Plaintiff realleges and incorporates by reference all allegations in all
21 preceding paragraphs.

22 68. Plaintiff was a non-exempt employee entitled to statutorily mandated
23 overtime wages.

25 69. In a given workweek, Defendants failed to pay one and one-half times the
26 applicable regular rate of pay for all hours worked in excess of 40 hours.

1 70. As a result of Defendants' failure to pay Plaintiff one and one-half times his
2 regular rate for all hours worked in excess of 40 per week in a given workweek,
3 Defendants failed and/or refused to pay Plaintiff the applicable overtime rate for all hours
4 worked for the duration of his employment, in violation of 29 U.S.C. § 207.

5
6 71. As a result of Defendants' willful failure to compensate Plaintiff the
7 applicable overtime rate for all hours worked, Defendants violated the FLSA.

8 72. As such, the full applicable overtime rate is owed for all hours that Plaintiff
9 worked in excess of 40 hours per week.

10
11 73. Defendants knew that – or acted with reckless disregard as to whether –
12 their failure to pay Plaintiff the proper overtime rate would violate federal and state law,
13 and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's
14 employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

15
16 74. Defendants have and continue to willfully violate the FLSA by not paying
17 Plaintiff a wage equal to one- and one-half times the applicable regular rate of pay for all
18 time Plaintiff spent working for Defendants.

19 75. Plaintiff is therefore entitled to compensation one and one-half times his
20 regular rate of pay for all hours worked in excess of 40 per week at an hourly rate, to be
21 proven at trial, plus an additional equal amount as liquidated damages, together with
22 interest, costs, and reasonable attorney fees.

23
24 **WHEREFORE**, Plaintiff, James McGarr, respectfully requests that this Court
25 grant the following relief in Plaintiff's favor, and against Defendants:
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27

- 1 A. For the Court to declare and find that the Defendants committed one of
2 more of the following acts:
- 3 i. Violated overtime wage provisions of the FLSA, 29 U.S.C. § 207(a),
4 by failing to pay proper minimum wages;
5
- 6 ii. Willfully violated overtime wage provisions of the FLSA, 29 U.S.C.
7 § 207(a) by willfully failing to pay proper overtime wages;
- 8 B. For the Court to award Plaintiff's unpaid overtime wage damages, to be
9 determined at trial;
- 10 C. For the Court to award compensatory damages, including liquidated
11 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- 12
- 13 D. For the Court to award prejudgment and post-judgment interest;
- 14
- 15 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
16 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
17 forth herein;
- 18 F. Such other relief as this Court shall deem just and proper.

19 **COUNT TWO: FAIR LABOR STANDARDS ACT**
20 **FAILURE TO PAY MINIMUM WAGE**

21 76. Plaintiff realleges and incorporates by reference all allegations in all
22 preceding paragraphs.
23

24 77. As a result of making improper deductions from Plaintiff's paycheck for
25 the final pay period of his employment, Defendant willfully failed or refused to pay
26 Plaintiff the FLSA-mandated minimum wage.
27

1 78. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
2 required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

3 79. Plaintiff is therefore entitled to compensation for the full applicable
4 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
5 liquidated damages, together with interest, reasonable attorney's fees, and costs.
6

7 **WHEREFORE**, Plaintiff, James McGarr, respectfully requests that this Court
8 grant the following relief in Plaintiff's favor, and against Defendants:

- 9 A. For the Court to declare and find that the Defendants committed one of
10 more of the following acts:
11
- 12 i. Violated minimum wage provisions of the FLSA, 29 U.S.C. §
13 206(a), by failing to pay proper minimum wages;
 - 14 ii. Willfully violated minimum wage provisions of the FLSA, 29
15 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;
- 16
- 17 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
18 determined at trial;
- 19 C. For the Court to award compensatory damages, including liquidated
20 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- 21
- 22 D. For the Court to award prejudgment and post-judgment interest;
- 23 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
24 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
25 forth herein;
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- 27 F. Such other relief as this Court shall deem just and proper.

COUNT THREE: ARIZONA MINIMUM WAGE ACT
FAILURE TO PAY MINIMUM WAGE

80. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

81. As a result of making improper deductions from Plaintiff's paycheck for the final pay period of his employment, Defendant willfully failed or refused to pay Plaintiff the Arizona minimum wage.

82. Defendant's practice of willfully failing or refusing to pay Plaintiff at the required minimum wage rate violated the AMWA, A.R.S. § 23-363.

83. Plaintiff is therefore entitled to compensation for the full applicable minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to twice the underpaid wages as liquidated damages, together with interest, reasonable attorney's fees, and costs.

WHEREFORE, Plaintiff, James McGarr, respectfully requests that this Court grant the following relief in Plaintiff's favor, and against Defendants:

A. For the Court to declare and find that the Defendant committed one of more of the following acts:

i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-363, by failing to pay proper minimum wages;

ii. Willfully violated minimum wage provisions of the AMWA, A.R.S. § 23-363 by willfully failing to pay proper minimum wages;

1 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
2 determined at trial;

3 C. For the Court to award compensatory damages, including liquidated
4 damages pursuant to A.R.S. § 23-364, to be determined at trial;

5 D. For the Court to award prejudgment and post-judgment interest;

6 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
7 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
8 herein;
9

10 F. Such other relief as this Court shall deem just and proper.
11

12 **COUNT FOUR: ARIZONA WAGE ACT**
13 **FAILURE TO PAY WAGES DUE AND OWING**

14 84. Plaintiff realleges and incorporates by reference all allegations in all
15 preceding paragraphs.

16 85. As a result of the allegations contained herein, Defendants did not
17 compensate Plaintiff wages due and owing to him.
18

19 86. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

20 87. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
21 for the entire time he was employed by Defendants.

22 88. Defendants knew that – or acted with reckless disregard as to whether –
23 their refusal or failure to properly compensate Plaintiff over the course of his
24 employment would violate federal and state law, and Defendants were aware of the
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1 Arizona Wage Act's requirements during Plaintiff's employment. As such, Defendants'
2 conduct constitutes a willful violation of the Arizona Wage Act.

3 89. Plaintiff is therefore entitled to compensation for his unpaid wages at an
4 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid
5 wages, plus interest thereon, and his costs incurred.
6

7 **WHEREFORE**, Plaintiff, James McGarr, requests that this Court grant the
8 following relief in Plaintiff's favor, and against Defendants:

- 9 A. For the Court to declare and find that the Defendants violated the unpaid
10 wage provisions of A.R.S. § 23-350, et seq., by failing to pay wages due
11 and owing to Plaintiff;
12
13 B. For the Court to award an amount that is treble Plaintiff's unpaid wages
14 pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
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16 C. For the Court to award prejudgment and post-judgment interest on any
17 damages awarded;
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19 D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of
20 the action and all other causes of action set forth in this Complaint; and
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22 E. Such other relief as this Court deems just and proper.
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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

1 RESPECTFULLY SUBMITTED this 30th day of November 2021.

2
3 BENDAU & BENDAU PLLC

4 By: /s/ Christopher J. Bendau


5 Christopher J. Bendau

6 Clifford P. Bendau, II

7 *Attorneys for Plaintiff*
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VERIFICATION

Plaintiff, James McGarr, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and believe, and, as to those matters, he believes them to be true.

DocuSigned by:

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James McGarr